

August 31, 2006

BY HAND-DELIVERY

Honorable Vernon A. Williams
Secretary
Surface Transportation Board
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Re: Finance Docket No. 34890, PYCO Industries, Inc. – Feeder
Line Application – Lines of South Plains Switching, Ltd. Co.

-217440

Finance Docket No. 34922, Keokuk Junction Railway Co. –
Feeder Line Application – Lines of South Plains Switching,
Ltd. Co.

-217441

Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are the original and ten (10) copies of BNSF Railway Company's Petition for Leave to Intervene.

I would appreciate it if you would date-stamp the enclosed extra copy and return it to the messenger for our files. Please let me know if you have any questions. Thank you for your assistance.

Sincerely yours,

Adrian L. Steel, Jr.

Enclosures

cc: Thomas F. McFarland, Esq.
Charles H. Montange, Esq.
Gary McLaren, Esq.
John D. Heffner, Esq.
William C. Sippel, Esq.
William A. Mullins, Esq.
Andrew Goldstein, Esq.
James L. Gorsuch, Esq.

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34890

-217440

PYCO INDUSTRIES, INC.
- FEEDER LINE APPLICATION -
LINES OF SOUTH PLAINS SWITCHING, LTD. CO.

Finance Docket No. 34922

-217441

KEOKUK JUNCTION RAILWAY CO.
- FEEDER LINE APPLICATION -
LINES OF SOUTH PLAINS SWITCHING, LTD. CO.

**PETITION OF BNSF RAILWAY COMPANY
FOR LEAVE TO INTERVENE**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

Finance Docket No. 34890

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– FEEDER LINE APPLICATION –
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– FEEDER LINE APPLICATION –
LINES OF SOUTH PLAINS SWITCHING, LTD. CO.

**PETITION OF BNSF RAILWAY COMPANY
FOR LEAVE TO INTERVENE**

Pursuant to 49 C.F.R. § 1112.4, BNSF Railway Company (“BNSF”) hereby moves the Board for leave to intervene in these proceedings and in support of its petition states as follows:

1. Intervention by BNSF will not unduly disrupt the procedural schedule in these proceedings inasmuch as the parties’ remaining filings are not due to be filed until September 18, 2006, and continuing until at least October 18, 2006, pursuant to Board’s August 18, 2006 Decision herein. Nor will BNSF’s intervention unduly broaden the issues raised in the proceedings. As explained further below, BNSF seeks to intervene for the limited purposes of ensuring (i) that BNSF’s ability to operate at Lubbock, TX efficiently and without undue interference is preserved; and (ii) that the right of first refusal granted to BNSF in its 1999 sale agreement with South Plains Switching, Ltd. Co. (“SAW”) is preserved.

2. BNSF's interest in the proceedings arises out of its May 3, 1999 "Agreement for Sale of Certain Assets, Rights and Obligations of The Burlington Northern and Santa Fe Railway Company to South Plains Switching, Ltd., Company" ("1999 Agreement") (attached hereto) pursuant to which BNSF sold certain rail lines and associated trackage at Lubbock to SAW. Under the 1999 Agreement, BNSF interchanged traffic with SAW at BNSF's Lubbock Yard, and SAW in turn served local Lubbock shippers. Now, under the Board's interim alternative service order issued in *PYCO Industries, Inc.—Alternative Rail Service—South Plains Switching, Ltd. Co.*, F.D. No. 34802 (served June 21, 2006), BNSF interchanges traffic with SAW and West Texas & Lubbock Railway Company, Inc. ("WTL") at BNSF's Lubbock Yard. While BNSF has worked with SAW and WTL to seek to maintain efficient operations during the interim period of alternative rail service,¹ BNSF needs to ensure that it can operate at Lubbock efficiently and without undue interference.

In addition, the 1999 Agreement provided in Section 7 (b) that "[a]ny subsequent agreement by Buyer [SAW] to sell all or any portion of the Rail Line (except to an affiliate of Buyer) must contain the effective right for Seller [BNSF] to purchase the Rail Line". The 1999 Agreement further provided BNSF with the right to review any sale of the trackage for sixty (60) days from the receipt of an executed sales agreement, and BNSF was vested during that period with the right to purchase the property "on the same, or substantially similar, basis" as set forth

¹ Under the parties' current arrangement, BNSF delivers incoming traffic destined to shippers on SAW's lines to WTL at BNSF's Lubbock Yard. WTL then moves the traffic to SAW's yard, where the traffic which SAW is to deliver is given to SAW. WTL then delivers PYCO's traffic to its facility. In contrast, outgoing traffic is delivered from the customers' facilities to the BNSF yard directly by both SAW and WTL. Both SAW and WTL must utilize portions of BNSF's mainline in making their deliveries of outgoing traffic, and the increased use of the mainline has at times interfered with BNSF's operations.

in the executed sales agreement for a “purchase price equal to the average of the highest three bids” received by SAW. *See* Section 7(b) of the 1999 Agreement. The right of first refusal was an integral part of BNSF’s agreement to sell its lines at Lubbock to SAW since BNSF needed to ensure that, over the long run, it is able to provide efficient and effective rail freight service to customers at Lubbock.

3. BNSF takes no position on the feeder line applications filed by PYCO and the Keokuk Junction Railway Company (“KJRY”) and neither supports nor objects to either such application. However, if the Board determines that either or both of the applications should be approved, approval should be conditioned on BNSF being able to operate at Lubbock efficiently and without undue interference. This can be achieved by the relevant parties entering into an operating protocol to achieve that result, with the Board resolving any disputed issues that the parties cannot resolve. Approval should also be conditioned on BNSF being able to exercise the right of first refusal granted to it in the 1999 Agreement.

4. It is BNSF’s understanding that PYCO and KJRY do not object to BNSF’s request that the Board require the feeder line applicant which eventually purchases SAW’s lines to enter into an operating protocol that would prevent undue interference with BNSF’s operations at Lubbock. BNSF further understands that PYCO and KJRY do not object to BNSF’s request that BNSF’s right of first refusal apply to any sale of the lines by the successful feeder line applicant back to SAW (pursuant to 49 U.S.C. § 10907(h)) or to another entity. Finally, BNSF understands that PYCO has no objection to the application of BNSF’s right of first refusal to the sale of the lines from SAW to either successful feeder line applicant pursuant to these proceedings. However, in its August 4, 2006 Competing Feeder Line Application, KJRY expressed objection to the application of the right of first refusal to such a sale. KJRY

argued that the application of the right to that transaction would be “improper as it would negate the processes set forth in Section 10907.” KJRY Competing Feeder Line Application at 28. KJRY does not provide any support for its position in this regard, and it is clear that KJRY’s position is incorrect.

When SAW purchased the lines from BNSF in 1999, it purchased them subject to the express right of first refusal granted by the agreement to BNSF. It may well be that BNSF will choose not to exercise its right of first refusal. Nonetheless, the Board’s order approving a feeder line application does not, in and of itself, constitute a conveyance of the subject lines. Instead, the Board’s approval decision orders the line owner to sell the lines to one of the applicants found to be qualified at the acquisition cost as determined by the Board. *See* 49 U.S.C. § 10907(b)(1) (“the Board shall require the rail carrier owning the railroad line to sell such line to such financially responsible person” (emphasis added)). The transaction is between the incumbent and the chosen applicant. It is undertaken pursuant to a sale agreement negotiated by those two parties. For example, in *Indiana Hi-Rail Corporation – Feeder Line Acquisition – Conrail Line Between Beesons and Connersville, IN*, 366 ICC 42 (1981), the Interstate Commerce Commission (“ICC” or “Commission”) found that both of the competing feeder line applicants (Indiana Hi-Rail Corporation and Indiana and Ohio Railroad Company) demonstrated that they qualified as financially responsible parties. As established precedent provides, the Commission did not, however, select between the two applicants but instead ordered that Conrail “negotiate with either one of [the] parties for the sale of the line” and that “[t]he buyer should inform us if a formal contract for sale is entered.” *Id.* at 50.

Further, the incumbent (here SAW) is bound in its sale of the lines by whatever terms and conditions apply to its ownership of the lines as may arise under the contractual documents by

which it originally acquired ownership. There is no need for the Board (and, in fact, it lacks jurisdiction) to override BNSF's contractually bargained-for right of first refusal. This principle is confirmed by the ICC's decision in *Milford-Bennington Railroad Company, Inc. – Feeder Line Acquisition – Boston and Maine Corporation Hillsborough Branch*, F.D. No. 31701 (1991 ICC LEXIS 250) at *9-*10, where the Commission held that encumbrances on a line involved in a feeder line application do not constitute a bar to the application, that the encumbrances remain in effect subject to the parties' contractual agreements, and that the granting of an application only authorizes the applicant to acquire the owner's interest in a line, whatever that interest may be.

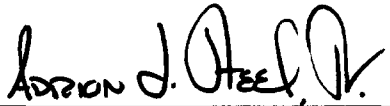
Moreover, the preservation of BNSF's right will not interfere with or detract from the purpose of the feeder line provisions of Section 10907 to enable shippers who are receiving inadequate service to receive alternative service from a different carrier. *See Caddo Antoine & Little Missouri R. Co. v. United States*, 95 F. 3d 740, 745-46 (8th Cir. 1996). In addition, both PYCO and KJRY are fully aware of (and have been for some time) the existence of BNSF's right of first refusal, and neither can justifiably claim to be prejudiced by that right when they proceeded to file and prosecute their feeder line applications with knowledge of the right.²

² Indeed, the balance of KJRY's feeder line application with respect to all of SAW's lines is not due until at least September 27, 2006, under the Board's procedural schedule, and it has a full opportunity to determine whether or not it wants to proceed with its application in light of the applicability of BNSF's right of first refusal.

Accordingly, BNSF requests that the Board grant its petition for leave to intervene, that it be permitted to participate fully in these proceedings as its interests may appear, and that the Board exercise its conditioning power to ensure that BNSF's operations at Lubbock are not disadvantaged or adversely impacted and that its right of first refusal under its contract with SAW is preserved.³

Respectfully submitted,

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Attorneys for BNSF Railway Company

Dated: August 31, 2006

³ With respect to the right of refusal, BNSF does not believe that a Board condition is, as a legal matter, required in order for it to exercise that right which arises under the 1999 Agreement and which stands independent of these proceedings. Nonetheless, in light of KJRY's expressed opposition to BNSF's position on the applicability of the right to a feeder line sale, the Board's confirmation, via condition or otherwise, that the right is applicable is appropriate.

CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of August 2006, a true and correct copy of the foregoing Petition of BNSF Railway Company for Leave to Intervene was served by overnight delivery on the following:

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5/3/99

AGREEMENT FOR
SALE OF CERTAIN ASSETS, RIGHTS
AND OBLIGATIONS
OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
TO
SOUTH PLAINS SWITCHING, LTD. COMPANY

**AGREEMENT FOR SALE OF CERTAIN ASSETS, RIGHTS AND OBLIGATIONS
OF THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
TO SOUTH PLAINS SWITCHING, LTD. COMPANY**

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Exhibit A	List of Tracks and Map/Print
Exhibit B	Quitclaim Deed
Exhibit C	Bill of Sale
Exhibit D	Agreements to be Assigned in Part to Buyer

AGREEMENT FOR
SALE OF CERTAIN ASSETS, RIGHTS
AND OBLIGATIONS
OF
THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY
TO
SOUTH PLAINS SWITCHING, LTD. COMPANY

This Agreement is entered into as of the third day of May, 1999, between THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation (hereinafter referenced as "Seller"), and SOUTH PLAINS SWITCHING, LTD. COMPANY, a Texas limited liability company (hereinafter referenced as "Buyer").

WHEREAS, Seller desires to sell and convey to Buyer on the terms and conditions set forth in this Agreement Seller's interest in a rail line of Seller's in the vicinity of Lubbock, Texas, in Seller's Old BN Yard and former BN and ATSF tracks generally south of the Old BN Yard at Lubbock, Texas, the rail freight transportation business which Seller conducts on this rail line, and certain other rights, obligations and assets as specified in this Agreement; and

WHEREAS, Buyer desires to purchase, pursuant to the terms and conditions set forth in this Agreement, Seller's interest in a rail line of Seller's in the vicinity of Lubbock, Texas, in Seller's Old BN Yard and former BN and ATSF tracks generally south of the Old BN Yard at Lubbock, Texas, the rail freight transportation business which Seller conducts on this rail line, and certain other assets, rights and obligations as specified in this Agreement.

NOW THEREFORE, Buyer and Seller agree as follows:

1. Description of Business Sold.

(a) Seller shall convey to Buyer on the date of Closing, subject to the terms and conditions set forth in this Agreement and the terms, conditions, reservations and exceptions set

forth in the Quitclaim Deed conveying this property, all of Seller's interest in the rail line segments of Seller in the vicinity of Lubbock, Texas, shown on the map print and list attached hereto as Exhibit A, except that Seller's tracks 9200 and 9205 shall be included in the conveyance, as well as the metal depot and contiguous real estate near the Old BN Yard. The above rail line segments, together with related rail corridor property interests, less Seller's retained real property interests and access rights, are described specifically in the Quitclaim Deed set forth in Exhibit B, attached hereto, and are referenced collectively hereinafter as "Rail Line."

Seller shall furnish Buyer a complete legal description of Rail Line, and Seller shall use its best efforts to furnish such description on or prior to the date of Closing. This conveyance is expressly subject to Seller's retained interests, as specified in detail in the Quitclaim Deed, for: (1) an exclusive, permanent easement for construction, maintenance and operation of one or more pipelines or fiber optics communication lines facilities and appurtenances, in, under, across, along and through all or any portion of the Rail Line; (2) mineral rights and related permanent access easements; (3) water rights and related permanent access, construction, maintenance and water pipeline rights; and (4) Seller's continued access by rail to tracks 0340 and 9298, at no cost to Seller, and tracks 9200 and 9205, at no cost to Seller for the first five years following the date of Closing and at the rate of \$1,000 per year commencing the sixth year following the date of Closing (and thereafter until such time as Seller notifies Buyer in writing that Seller no longer desires to use said tracks), such rights to be subject to dispatching control and direction of Buyer.

(b) Seller shall convey to Buyer, on the date of Closing, the rail freight transportation business which Seller conducts on the Rail Line, subject to the terms and conditions set forth in this Agreement, in the Quitclaim Deed, or in any agreement assigned by Seller to Buyer in accordance with the terms of this Agreement.

(c) Seller shall convey to Buyer on the date of Closing, by a Bill of Sale identical in form to the Bill of Sale set forth as Exhibit C attached hereto, all of Seller's interest in all rail, ties, spikes, tie plates, rail anchors, bridges, culverts, signalling equipment, and other supporting structures, ballast, track materials and supplies, and the metal depot at or near the Old BN Yard (excluding any vehicles, maintenance equipment on wheels, radios, and computer equipment) that, on the date of the Closing, are not improvements that constitute the Rail Line, but which then are present on the real property comprising the Rail Line. This conveyance shall be subject to the terms and conditions set forth in this Agreement, including those set forth in Exhibit D, and the terms and conditions set forth in any agreement assigned by Seller to Buyer in accordance with the terms of this Agreement.

(d) Incident to the conveyance of the Rail Line, effective as of the date of the Closing, Buyer shall have the right to operate over Seller's tracks in Seller's Lower Yard at Lubbock, Texas, and over Seller's mainline between track 9298 and Seller's Lower Yard at Lubbock, Texas, all as designated by Seller's operating personnel (which rail line segments shall be referenced collectively herein as "Interchange Access Line"), at no charge to Buyer, for the sole purpose of interchanging rail traffic and equipment between Buyer and Seller at Seller's Lower Lubbock Yard. Buyer shall operate its trains over the Interchange Access Line subject to Seller's dispatching directions. Buyer agrees to keep the Interchange Access Line clear at all times, except when actually switching cars between Buyer and Seller. In dispatching the Interchange Access Line, Seller shall accord trains of Buyer equal priority with trains of Seller. Nothing herein shall preclude Seller from abandoning any portion of the Interchange Access Line if conditions otherwise warrant.

(e) Seller shall assign to Buyer on the date of Closing, subject to all terms and conditions set forth in this Agreement, or in any agreement assigned by Seller to Buyer in accordance with

the terms of this Agreement, all assignable rights and obligations of Seller to the extent that they are related to the Rail Line and are set forth in any agreement identified in Exhibit D, which is attached hereto. Buyer on the date of Closing shall accept the assignment of all such rights and obligations, as of the date of Closing, in accordance with their terms and the terms of this Agreement. Seller shall reserve all rights set forth in any agreement identified in Exhibit D to the extent those rights are related to one or more other rail lines or property of Seller. If any contract is related to the Rail Line and inadvertently is not identified in Exhibit D, it is the intent of Seller and Buyer that such contract be deemed to have been assigned by Seller to Buyer, in whole or in part as appropriate, effective the date of Closing. Seller promptly shall provide to Buyer a copy of any such contract immediately upon locating it. Buyer shall make no claim against Seller arising out of any failure to obtain a consent to assignment from any party to an agreement assigned by Seller to Buyer, in whole or in part. It is the intent of both Seller and Buyer that all assignments of rights and obligations related to the Rail Line shall be effective on the date of Closing, whether or not any consents to such assignments then have been obtained.

2. Consideration for the Sale.

(a) In consideration for Seller's sale of its interest in the Rail Line, and conveyance of the other rights, interests and obligations described in Paragraph 1 of this Agreement, Buyer agrees to all of the following:

- (1) To accept all transferred real and personal property "AS IS, WHERE IS" and "with all faults", except for the specific representations and warranties set forth in this Agreement.

- (2) To pay on the date of Closing a purchase price of TEN DOLLARS (\$10.00), for Seller's assets, rights and obligations to be conveyed to Buyer as set forth herein.
 - (3) To maintain the Rail Line at a level adequate for the required rail service.
 - (4) To pay in addition to the purchase price all costs of Closing (except Seller's cost of preparation of documents to be delivered at Closing). This includes, but is not limited to, any escrow and service fees, real estate transfer taxes, recording fees and sales taxes associated with this Agreement or any of the conveyances governed by this Agreement.
- (b) Buyer shall obtain the written consent of Seller, which consent shall not be unreasonably withheld or delayed, prior to entering into any agreement with any other party, or issuing any license or permit to any other party, which would allow such other party any right to cross or access any portion of the Rail Line to serve any customer located along the Rail Line.
- (c) Without Seller's prior written consent, which consent shall not be unreasonably withheld, (1) Buyer shall not seek authority from the Surface Transportation Board or any other governmental agency having jurisdiction, to abandon or discontinue rail service over the Rail Line; and (2) Buyer shall not remove any track from the Rail Line except in connection with the repair or replacement of the track, unless (i) in the case of house track there has been no movement of revenue freight over the track for a period of three years, or (ii) in the case of lead track there has been no movement of revenue freight over the track for a period of five years.

3. Governmental Approval.

- (a) Promptly following execution of this Agreement, Buyer, at its sole expense, shall prepare and file such documents as may be required to secure approval, or exemption from

approval, of this transaction by the Surface Transportation Board of the United States Department of Transportation ("STB"), as appropriate. Buyer shall make all reasonable efforts to obtain this approval or exemption in time for this transaction to close on or before May 31, 1999. Buyer shall permit Seller to review prior to filing all documents proposed by Buyer to be filed with the STB, or any court, to secure legal approval or exemption of this transaction.

4. Representations and Warranties.

(a) Seller hereby represents and warrants to Buyer, and Buyer's successors and assignees, the following facts, as of the date of this Agreement and as of the date of Closing:

- (1) Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware;
- (2) Seller has the corporate power and authority to enter into this Agreement and carry out its obligations under this Agreement;
- (3) The execution, delivery and performance of this Agreement have been duly authorized and approved by all necessary corporate actions of Seller, and no further corporate proceedings of Seller are required to complete the transactions covered by this Agreement;
- (4) All of Seller's obligations set forth in this Agreement constitute legal, valid and binding obligations of Seller which are enforceable against Seller in accordance with their terms, except to the extent enforcement may be limited by bankruptcy, insolvency or reorganization law;

- (5) There is no provision in the Certificate of Incorporation or By-Laws of Seller which prohibits the execution of this Agreement or consummation of the transactions covered by this Agreement;
- (6) The negotiations related to this Agreement have been handled by Seller on its own behalf, without intervention of any agent or other person, so that no party has a valid claim on this basis for any finder's fee, brokerage commission, or other similar payment in connection with any of the transactions included in this Agreement;
- (7) Seller has duly filed with the appropriate agencies of the United States, the State of Texas, and appropriate local governments or political subdivisions in Texas, all tax returns and reports required to be filed; Seller either has paid in full, or is agreeable to paying in full as finally determined, all taxes, interest, penalties, assessments or deficiencies which are due for the period up to the date of Closing; and Seller has made all withholdings of tax which are required to be made under all applicable regulations of the United States, the State of Texas, and local governments in Texas;
- (8) To Seller's knowledge, there is no pending or threatened litigation or arbitration proceeding, or administrative proceeding or investigation, against or affecting the properties or assets comprising the Rail Line, or Seller's rights to conduct rail freight transportation operations over the Rail Line as Seller conducts those operations on the date of this Agreement, the result of which foreseeably would

materially adversely affect Buyer's ability to conduct rail freight transportation operations over the Rail Line on the day following the date of Closing;

- (9) Seller has received no written notice of any pending civil, criminal, or administrative actions with respect to any hazardous or toxic substance on or adjacent to the Rail Line (As used herein, "written notice" shall mean written notice delivered to either Seller's Assistant Vice President-Environmental and Hazardous Materials, or Seller's Director Environmental Remediation and Special Projects, who are the people designated by Seller to receive notice of such matters);

- (10) The physical condition of the Rail Line will be sufficient to enable Buyer to conduct rail freight transportation operations over the Rail Line on the day following the date of Closing; and

- (11) No representation or warranty by Seller in this Agreement contains any untrue statement of a material fact, nor omits any material fact that is necessary to prevent that representation or warranty from being materially misleading.

(b) Buyer hereby represents and warrants to Seller, and Seller's successors and assignees, the following facts as of the date of this Agreement and as of the date of Closing, except where specifically noted to be as of the date of Closing only:

- (1) Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Texas, and by the date of Closing will be qualified to do business in the State of Texas;

- (2) Buyer has all requisite authority to purchase Buyer's properties and Seller's rights and properties which are conveyed to Buyer by this Agreement; to enter into this Agreement; to conduct rail freight transportation business on the Rail Line; and to perform all of Buyer's obligations under this Agreement;
- (3) The execution of this Agreement and consummation of the transactions which are a part of this Agreement have been duly authorized and approved by all necessary company actions by Buyer, and immediately upon execution of this Agreement by Buyer's authorized representative, all of Buyer's obligations set forth in or referenced in this Agreement shall constitute legal, valid and binding obligations of Buyer, or Buyer's successors or assigns, which obligations are enforceable in accordance with their terms against Buyer or Buyer's successors or assignees;
- (4) There is no provision in the Certificate of Incorporation or By-Laws of Buyer which prohibits the execution of this Agreement or consummation of the transactions covered by this Agreement;
- (5) As of the date of Closing, Buyer shall have obtained all legal authority which is necessary to enable Buyer lawfully to conduct rail freight transportation operations over the Rail Line as a common carrier and under one or more rail freight transportation contracts, commencing at 12:01 a.m. on the day following the date of Closing;
- (6) The negotiations related to this Agreement have been handled by Buyer on its own behalf, without intervention of any agent or party, and in such manner as not to give rise to any valid claim by any party for any finder's fee, brokerage

commission, or other similar payment in connection with any of the transactions included in this Agreement;

- (7) Neither Buyer nor any of Buyer's equity owners or financing sources, nor any of their partners, is a Class I railroad or affiliated with a Class I railroad; and
- (8) No representation or warranty by Buyer in this Agreement contains any untrue statement of a material fact, nor omits any material fact that is necessary to prevent that representation or warranty from being materially misleading.

5. Inspection and Condition of Rail Line.

(a) By signing this Agreement, Buyer acknowledges that Buyer has inspected the Rail Line, including all improvements and structures on the Rail Line. Buyer further acknowledges that (i) except as set forth in Paragraphs 4(a)(8), 4(a)(9), and 4(a)(10) of this Agreement, no representation has been made by Seller to Buyer concerning the state or condition of the Rail Line, or the age of any improvements on the Rail Line; (ii) Buyer has not relied upon any statement or declaration of Seller with respect to the physical condition of the Rail Line, Seller's title to the Rail Line, Seller's freight traffic volumes to or from the Rail Line, or any other matter, either oral or in writing, as an inducement to entering into this Agreement, other than as stated in this Agreement; and (iii) the sole consideration for execution of this Agreement by Buyer is set forth in this Agreement.

(b) EXCEPT AS SET FORTH IN PARAGRAPH 4(a) OF THIS AGREEMENT, SELLER HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE RAIL LINE, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY

OF THE MATERIAL OR WORKMANSHIP OF THE RAIL LINE, OR THE CONFORMITY OF THE RAIL LINE TO ITS INTENDED USES. SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) WITH RESPECT TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OF THE RAIL LINE OR THE CONFORMITY OF THE RAIL LINE TO ITS INTENDED USES. SELLER OFFERS, AND BUYER ACCEPTS, THE RAIL LINE IN "AS IS, WHERE IS" AND "WITH ALL FAULTS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON SELLER'S RIGHTS, INTEREST, AND TITLE TO THE PROPERTY COMPRISING THE RAIL LINE.

6. Liability and Indemnity.

(a) Cooperation in Defense. Buyer and Seller agree that, following the date of Closing, they will cooperate as necessary in defense of any claim, demand, investigation or litigation arising out of Seller's or Buyer's ownership or operation of the Rail Line.

(b) Definition of Losses. In this Agreement the term, "Losses" shall include all costs, expenses, fees or liabilities of, or in any way related to the following: (i) any violation of law or regulation; (ii) any damage to property, the environment or to natural resources; (iii) any bodily injury or death of any person; or (iv) the breach of any contract. "Losses" shall include, but not be limited to, all costs of claims, activities in response to enforcement, damages, judgments, awards, orders, decrees, payments, fines, penalties, assessments, court costs, and attorney, consultant and expert witness fees.

(c) General Liability and Indemnity.

- (1) Seller's General Liability and Indemnity. Except as provided in Paragraph 6(d) of this Agreement (environmental liability), Seller shall be responsible for, and shall indemnify, defend and hold harmless Buyer fully against, all Losses, which:
- (i) except as limited by clause (iii) just below, arise out of Seller's ownership or operation of the Rail Line on or prior to the date of Closing; (ii) result from any breach by Seller of any of its representations or warranties set forth in Paragraphs 4(a) and 10 of this Agreement, or, except as covered by clause (iv) just below, any failure by Seller to perform any of its obligations under this Agreement; (iii) result from claims of third parties caused by Seller's performance or nonperformance, or Buyer's nonperformance only where Buyer had no knowledge of the existence of the duty to perform, under any material contract, lease, permit, license, easement or commitment related to the Rail Line that is not identified in this Agreement or on Exhibit D; or (iv) occur during Seller's operations on the Interchange Access Line, regardless of Seller's or Buyer's negligence or alleged negligence, solely to the extent that such Losses involve Seller's property or employees or lading on Seller's trains, or where third parties or their property (other than lading on Buyer's or Seller's trains) are involved, the negligent party shall respond in accordance with the law of the applicable jurisdiction.
- (2) Buyer's General Liability and Indemnity. Except as provided in Paragraph 6(d) of this Agreement (environmental liability), and further except for Losses resulting from one or more of Seller's representations or warranties set forth in this

Agreement containing any untrue or materially misleading statement of a material fact, or omitting any material fact that is necessary to prevent the representation or warranty from being materially misleading, Buyer shall be responsible for, and shall indemnify, defend and hold harmless Seller fully, against, regardless of any negligence or alleged negligence of Seller prior to closing, all Losses which:

(i) except as limited by clause (iii) just below, arise out of Buyer's ownership or operation of the Rail Line after 12:01 a.m. on the day following the date of Closing; (ii) result from any breach by Buyer of any of its representations or warranties set forth in Paragraph 4(b) of this Agreement, or any failure by Buyer to perform any of its obligations under this Agreement; (iii) result from claims of third parties caused by Buyer's nonperformance or required performance under any material contract, lease, permit, license, easement or commitment relating to the Rail Line, where that contract, lease, permit, easement or commitment either is identified in this Agreement or on Exhibit D, or Buyer has specific knowledge of it, but then only from the time when Buyer acquired such specific knowledge; or (iv) arise out of, or are attributable to Buyer's activities or operations on the Interchange Access Line, regardless of Seller's negligence or alleged negligence, except to the extent Losses involve Seller's property or employees or lading on Seller's trains, or where third parties or their property (other than lading on Buyer's or Seller's trains) are involved, in which case the negligent party shall respond in accordance with the law of the applicable jurisdiction.

(d) Environmental Liability and Indemnity.

(1) Buyer Accepts the Rail Line "As Is, Where Is". Buyer acknowledges that Seller has provided Buyer with full access to inspect the Rail Line. Buyer further acknowledges that Seller makes only those representations and warranties to Buyer concerning the existence of any hazardous or toxic substances on or near the Rail Line, or compliance of the Rail Line with any statutes, ordinances, rules, regulations, orders or decisions with regard to hazardous or toxic substances on or near the Rail Line, which are expressly set forth in Paragraph 4(a)(9) of this Agreement.

(2) Seller's Environmental Liability and Indemnity. Notwithstanding any other liability or indemnification provision in this Agreement, Seller shall be responsible for, and shall indemnify, defend and hold harmless Buyer fully against, Losses incurred due to any claim, demand or litigation concerning violation of any applicable statute, ordinance, rule, regulation, order or decision in any way concerning any of the following: (i) any chemical, material or substance that is now, or at the time in question, is regulated or governed by any law, the release of which creates any liability under any applicable law; or (ii) any other material which, when released, would cause significant ecological damage (items described by (i) or (ii) above are referenced hereinafter as "Hazardous Materials") located on or near the Rail Line where such Losses:

(a) were caused by one or more acts of Seller that occurred on or prior to the date of Closing; and

(b) result from any written claim ("Claims") that is delivered to Seller within four years following the date of Closing; and

(c) exceed \$10,000.00 in the aggregate in any year.

(3) Buyer's Environmental Liability and Indemnity. As part of the consideration for this Agreement, and notwithstanding any other liability or indemnification provision in this Agreement, Buyer shall be responsible for, and shall indemnify, defend, and hold harmless Seller fully against, regardless of any negligence or alleged negligence of Seller occurring prior to Closing, Losses incurred due to any claim, demand or litigation concerning violation of any applicable statute, ordinance, rule, regulation, order or decision in any way concerning any Hazardous Materials located on or near the Rail Line where such Losses either:

(a) were not caused by one or more acts of Seller, or Seller's corporate predecessors, regardless of when the act or omission giving rise to the claim occurred; or

(b) regardless of cause, do not result from a Claim delivered to Seller within four years following the date of Closing; or

(c) were caused by Seller and result from a Claim delivered to Seller within four years of the date following Closing, but only up to \$10,000.00 in the aggregate in any year.

Buyer also shall be responsible for, and shall indemnify, defend and hold harmless Seller fully against, regardless of any negligence or alleged negligence of Seller, Losses incurred due to any claim, demand or

litigation concerning violation of any applicable statute, ordinance, rule, regulation, order or decision in any way concerning any Hazardous Materials on or near the Interchange Access Line, to the extent such Losses arise out of, or are attributable to, Buyer's activities or operations on the Interchange Access Line, except to the extent Losses result from Seller's affirmative negligent acts.

(4) Arbitration of Allocation of Liability Between Buyer and Seller. Any dispute between Seller and Buyer as to allocation between them of Losses for which both Seller and Buyer are responsible under the terms of this Paragraph 6 shall be settled by binding arbitration in accordance with the rules of the American Arbitration Association.

(5) Buyer To Comply With Hazardous Materials Laws. Buyer agrees to comply with all federal, state and local laws, regulations and rules concerning handling and disposal of Hazardous Materials.

(6) Liability Remedies and Obligations Are Exclusive. Buyer and Seller agree that the remedies and obligations set forth in this Paragraph 6 shall be exclusive remedies and obligations of each one to the other with respect to any Losses relating to the release or existence of Hazardous Materials on or near the Rail Line.

(e) Seller to Delivery Property Records to Buyer. Seller shall deliver to Buyer, on or soon following the date of Closing, originals or copies of whatever records, prints, archival information, or other evidence Seller locates in a reasonable search of Seller's records, which

bears upon the use of, maintenance, or title to the real estate comprising the Rail Line during the time the Rail Line was operated by Seller as a common carrier line of railroad. If, at any time after Closing, Seller locates any other documents which bear upon the use of, maintenance, or title to the real estate comprising the Rail Line, Seller promptly shall provide originals or copies of those documents to Buyer.

7. Assignment; Seller's Right of First Refusal.

(a) Buyer may not assign this Agreement, or any rights or obligations under this Agreement, to another railroad, or any party or individual who at the time of the assignment is affiliated with or working for another railroad, without the prior written consent of Seller, which consent shall not be unreasonably withheld. Any assignee, including any successor in interest, of Buyer's or Seller's rights under or property acquired by this Agreement, shall assume in writing all of Buyer's or Seller's continuing and existing or thereafter arising obligations under this Agreement, and under any then effective contract assigned by Seller to Buyer, in whole or in part, in accordance with the terms of this Agreement, which obligations are related to the property or rights involved in the assignment.

(b) Any subsequent agreement by Buyer to sell all or any portion of the Rail Line (except to an affiliate of Buyer) must contain the effective right for Seller to purchase the Rail Line, or portion thereof, from Buyer, on the same, or substantially similar, basis as that set forth in the subsequent sale agreement. Buyer shall deliver to Seller a copy of the executed subsequent sale agreement within seven days following its execution. After receiving such copy, Seller and Buyer then shall negotiate in good faith for sixty days Seller's purchase of the Rail Line, or portion thereof, from Buyer. If Seller, at any time during these sixty days, offers in writing to

purchase from Seller the Rail Line, or portion thereof, on the same, or substantially similar, basis as that set forth in the subsequent sale agreement, and at a purchase price equal to the average of the highest three bids received by Buyer, then Buyer, within seven days, shall accept such offer, and within thirty days thereafter, shall convey such property to Seller. The foregoing shall not apply where Buyer wishes to sell small segments of track or property comprising the Rail Line where such sale would not hinder the overall operations of Buyer on the Rail Line.

8. Obligations are Continuing.

The representations, warranties and obligations of Buyer and Seller in this Agreement are continuing and survive the Closing. Terms of continuing obligations in this Agreement are subject to amendment only by a written contract signed by both Buyer and Seller, or their respective successors or assignees.

9. Liens and Encumbrances.

Seller represents, warrants and covenants that Seller has not caused or suffered, and will not cause or suffer prior to the date of Closing, any liens or encumbrances to be filed against the Rail Line or the Interchange Access Line which would materially adversely affect Buyer's ability to conduct rail freight transportation operations on the Rail Line or the Interchange Access Line on the day following the date of Closing. Buyer agrees to take title to the Rail Line subject to all liens and encumbrances on the Rail Line, except for the liens that would violate one or more of Seller's representations and warranties in Paragraph 4(a) or this Paragraph. The only encumbrances on the Rail Line of which Seller is aware are related to the agreements identified in Part I of Exhibit D, attached hereto, and may encumber the Rail Line on the terms and conditions set forth in those agreements.

10. Pending Public Works Projects.

Seller shall notify Buyer prior to closing of all pending public works projects on the Rail Line of which Seller is aware, Seller shall pay the railroad's share of the cost of whatever work is performed on pending public works projects before the date of Closing, and Buyer shall pay the railroad's share of the cost of whatever work is performed on these projects after the date of Closing. Any payments received by Buyer or Seller from any government body for a pending public works project shall be apportioned on the basis that Seller shall receive that share of the payments applicable to work performed on these projects prior to date of Closing, and Buyer shall receive that share of the payments applicable to work performed on these projects after the date of Closing.

11. Closing.

(a) The closing of this transaction shall occur on May 31, 1999, or an earlier date mutually agreeable to the parties (referenced herein as "Closing").

(b) At Closing, Seller shall deliver to Buyer the following documents:

- (1) A sufficient number of original counterparts of executed Quitclaim Deeds to the Rail Line, in exact form as the Quitclaim Deed attached hereto as Exhibit B, to enable Buyer to file an original Quitclaim Deed in each county in which the real property comprising the Rail Line is located;
- (2) An executed Bill of Sale in exact form as the Bill of Sale attached hereto as Exhibit C;
- (3) A copy of Seller's Articles of Incorporation and By-Laws; and

(4) An opinion of counsel for Seller to Buyer with respect to those items represented by Seller to Buyer in Paragraphs 4(a)(1), 4(a)(2), 4(a)(3), 4(a)(4), 4(a)(5) and 4(a)(8) of this Agreement.

(c) At Closing, Buyer shall deliver to Seller:

(1) A copy of Buyer's Articles of Incorporation and By-Laws;

(2) A Certificate of Insurance establishing that Buyer has effective liability insurance meeting the requirements of Paragraph 16 of this Agreement; and

(3) An opinion of counsel for Buyer to Seller with respect to those items represented by Buyer to Seller in Paragraphs 4(b)(1), 4(b)(2), 4(b)(3), 4(b)(4), 4(b)(5) and 4(b)(7) of this Agreement.

(d) At Closing, Buyer shall deliver to Seller the purchase price, as set forth in Paragraph 2 of this Agreement.

12. Proration.

(a) Prepaid rentals, utilities, and other income or fees attributable to the contracts related to the Rail Line that are being assigned under Paragraph 1 of this Agreement, shall be prorated between Seller and Buyer in such manner as to allocate to Seller all income received, and all expenses incurred, on or prior to the date of Closing, and to allocate to Buyer all income received, and expenses incurred, after the date of Closing.

(b) Seller shall be responsible for all real estate taxes applicable to the Rail Line for the calendar year 1999. Buyer shall be responsible for all real estate taxes applicable to the Rail Line commencing on and following calendar year 2000.

13. Interchange.

(a) Buyer and Seller shall interchange rail freight cars and equipment to and from each other at Seller's Lower Lubbock Yard. Seller shall have the right to change the location at which such interchange occurs, within the Lubbock, Texas area, if Seller reasonably determines that such change is necessary for operational purposes. Such interchange may include tracks designated by Buyer on Buyer's property as mutually agreed between both parties. Interchange between Buyer and any party other than Seller will not be permitted at any location along the Rail Line other than at Seller's Lower Lubbock Yard. The trackage upon which such interchange takes place shall be referenced hereinafter as "Interchange Track". Buyer will block traffic for interchange with Seller in accordance with written instructions to be furnished by Seller.

(b) Cars and their contents delivered by one party to the other on an Interchange Track shall be deemed to be in the possession of the receiving party as of the time they are placed on the Interchange Track and uncoupled from the delivering party's train or engine, except that if any such car is rejected by the receiving party under the Interchange Rules of the Association of American Railroads ("AAR") or any successor rules, the refused car shall be deemed to remain in the possession of the delivering party until that car is accepted by the receiving party.

14. Car Hire Costs.

In connection with all loaded and empty rail equipment moving in rail freight transportation service to or from the Rail Line and interchanged between Buyer and Seller on an Interchange Track, the party in possession of any car shall be responsible for all car hire costs, per diem expenses and mileage allowances payable with respect to such car, for any per diem charges for trailers or containers carried by such car, and for any equipment use charges

applicable to any RoadRailer equipment or similar carless intermodal technology. Although Buyer is a line haul carrier, the parties acknowledge that for purpose of car hire only, Buyer will be eligible for treatment as a terminal switch carrier entitled to transfer of car hire liability for up to 96 hours within the provisions of Car Hire Rule 5 - Switching Car Hire Expense Recovery, as set forth in the Code of Car Hire Rules administered by the Association of American Railroads. Seller shall make reasonable efforts to make freight cars available at Buyer's request on an Interchange Track as needed by Buyer for rail service to or from facilities on or along the Rail Line, on a non-discriminatory basis between Seller's car needs on similar rail-lines and Buyer's car needs; however, Seller makes no guarantee of equipment supply to Buyer. It is the responsibility of Buyer to provide all locomotives, freight equipment for local traffic, and maintenance of way equipment.

15. Liability Insurance.

(a) For so long as Seller conducts any activities on any portion of the Interchange Access Line, Buyer shall maintain a comprehensive general form of insurance covering liability in connection with any of Buyer's activities or operations on or near the Interchange Access Line, including but not limited to Public Liability, Personal Injury and Property Damage, Federal Employers' Liability Act Liability, Bill of Lading and Foreign Rolling Stock Liability, and Contractual Liability, with such limits, deductibles and exclusions as Seller may agree are satisfactory, provided however, that: (i) such limits shall not be less than \$2 million per occurrence, and \$4 million in the aggregate; and (ii) policy terms shall not exclude or limit, in connection with any of Buyer's or Seller's activities or operations on or near the Interchange Access Line, coverage where activities or operations are near railroad tracks. Seller shall be

named as an ADDITIONAL INSURED on such liability insurance policy. Such liability insurance must be purchased from an insurance company licensed to do business in Texas, and possessing a current Best's Insurance Guide Rating of B and Class X or better.

(b) Buyer shall provide to Seller evidence of Buyer's liability insurance coverage at Closing, with copies of its insurance policies and any amendments, as soon as they are available, and with evidence of continued insurance coverage on January 1 and July 1 of each year. Buyer's failure to provide such evidence shall entitle Seller to purchase such liability insurance, and withhold from the divisions payment forwarded to Buyer the cost of this insurance.

16. Seller's Authority to Establish Through Routes and Offer Through Routes.

Buyer and Seller agree that, with respect to all current and future traffic originating or terminating on or along the Rail Line and interchanged between Buyer and Seller at Lubbock, Texas, for ninety-nine years following the date of Closing, Seller shall have authority to establish through routes and offer through freight rates via through routes involving both Buyer and Seller with interchange between Buyer and Seller at Lubbock, Texas. Buyer shall not impose a surcharge upon this traffic without the prior written consent of Seller, which consent shall not be unreasonably withheld. For these ninety-nine years, Seller shall specify junctions and routes for all traffic, effective the day following the date of Closing. For this same ninety-nine years, following the date of Closing, Buyer automatically concurs in all such through rates established by Seller, whether for present or future freight traffic, so long as Buyer shall receive for transporting the traffic the division of revenues that is set forth in Paragraph 17(a) of this Agreement.

17. Division of Revenue.

(a) Buyer and Seller agree that for so long as Seller establishes through freight rates for interline freight transportation service involving both Buyer and Seller, the through revenue accruing on all existing and future carload traffic movements interchanged between Buyer and Seller at Lubbock, Texas, to or from existing and future rail destinations or origins on or along the Rail Line, shall be divided between Buyer and Seller on the following basis:

- (1) For each carload of freight that originates or terminates on the Rail Line and is interchanged between Buyer and Seller at Lubbock, Texas, billed in a block of 27 or more cars for an individual shipper or receiver, Buyer shall receive \$40.00 per car from Seller.
- (2) Except as provided in subparagraph (3), below, for each carload of freight that originates or terminates on the Rail Line and is interchanged between Buyer and Seller at Lubbock, Texas, not billed in a block of 27 or more cars for an individual shipper or receiver, Buyer shall receive \$125.00 per car from Seller.
- (3) Commencing as of January 1, 2000, should the number of carloads of freight originating and terminating on the Rail Line, interchanged between Buyer and Seller at Lubbock, Texas, and not billed in blocks of 27 or more cars for an individual shipper or receiver exceed 3,300 carloads in any calendar year, Buyer shall receive \$115.00 per car from Seller for each carload commencing with car 3,301 for the duration of that calendar year.

For purposes of computing the division of revenue set forth above, two loaded trailers or containers in intermodal service shall count as one carload.

(b) For all current and future traffic originating or terminating on or along the Rail Line, and interchanged between Buyer and Seller at Lubbock, Texas, for twenty-five years following the date of Closing, the divisions set forth in Paragraph 17(a) shall be adjusted annually, commencing as of January 1, 2001, based on 50% of the increase or decrease between the fourth quarter of 2000 compared to the fourth quarter of 1999, in the Rail Cost Adjustment Factor, unadjusted for productivity, as published by the Association of American Railroads (or, if it ceases to be used, some similar rail cost index), and thereafter as of each January 1 based on 50% of the increase or decrease in the Rail Cost Adjustment Factor in the fourth quarter of the immediately preceding year compared to the fourth quarter of the year before that. However, in no event will Buyer's divisions be reduced to a level less than the amounts specified in subparagraph (a) of this Paragraph 17.

(c) Nothing in this Agreement shall preclude Seller and Buyer from negotiating and mutually agreeing to different divisions than those specified in this Paragraph. Divisions of revenue shall be paid by Seller only where Seller is entitled to receive linehaul revenues for a shipment. Buyer shall not impose any surcharge or any additional or increased charges to shippers without Seller's written consent, which consent shall not be unreasonably withheld.

18. Buyer to Offer to Hire Seller's Qualified Employees.

Buyer shall consider for employment those of Seller's employees who want to work for Buyer on the terms and conditions of employment that are offered by Buyer, at Buyer's sole discretion. Buyer shall give priority hiring consideration to employees of Seller who work on the Rail Lines and are represented by the Brotherhood of Maintenance of Way Employees. Any such individual who Buyer in its sole discretion determines to be qualified for a job that Buyer

has available, shall be offered such job by Buyer on the terms and conditions that Buyer establishes, in Buyer's sole discretion. Buyer promptly shall notify Seller of the name of each of Seller's current employees who Buyer offers to hire, and also the name of each of these employees who Buyer actually hires. Buyer shall assume a neutral stance in any Brotherhood of Maintenance of Way Employees union organizing effort.

19. Transfer of Operations.

All rail operations on the Rail Line shall be transferred from Seller to Buyer at 12:01 a.m. on the day following the date of Closing. Upon reasonable advance notice provided by Buyer to Seller, prior to the Closing Seller will switch up to two of Buyer's locomotives from Buyer's affiliates in Slaton, Texas, and in Oklahoma, to the Rail Line, at no charge to Buyer. Following the date of Closing, Seller will perform (at no cost or charge to Buyer) up to two switch movements per year of Buyer's locomotives between the Rail Line and Slaton, Texas, for locomotive maintenance purposes.

20. Collection of Revenues.

(a) Seller shall submit freight bills or interline settlements for, and shall collect, all revenues due for movements over the Rail Line of all shipments moved over the Rail Line, on or before the date of Closing. Seller shall assess and collect all charges due for all switching services performed on the Rail Line on or before the date of Closing. Seller shall assess and collect all demurrage and miscellaneous charges relating to car supply and other services performed on the Rail Line on or before the date of Closing.

(b) Except as otherwise provided by freight transportation contracts, all shipments which move to, from or via the Rail Line that are interchanged between Buyer and Seller, after 12:01

a.m. on the day following the date of Closing, and which are made under rates and routes established by Seller as set forth in Paragraph 16 of this Agreement, shall be settled between Buyer and Seller on the basis of a modified junction settlement plan, with Seller paying division of revenue payments to Buyer on a weekly basis within five working days following the date on which Seller issues the revenue waybill for the movement. Seller shall submit freight bills for, and shall collect all revenues due for, shipments originating or terminating on the Rail Line that are interchanged between Buyer and Seller, including all prepaid shipments that originate on the Rail Line, and all collect shipments that terminate on the Rail Line, except for shipments where Seller does not receive line haul revenues. Seller has the right to grant, or refuse to grant, credit to any customer on the Rail Line concerning any shipments routed to, from or via the Rail Line that are interchanged between Buyer and Seller. Buyer shall assess and collect all charges due for all switching services performed on the Rail Line at and after 12:01 a.m. on the day following the date of Closing. Buyer shall assess and collect all demurrage and miscellaneous charges relating to car supply and other services performed on the Rail Line at and after 12:01 a.m. on the day following the date of Closing.

21. Transfer of Liabilities; Payment of Charges.

For the period before and including the day of Closing, Seller shall be responsible for: (a) all common carrier rail operations, including car supply, on the Rail Line; (b) any freight loss and damage claims attributable to rail operations over the Rail Line; and (c) all car hire and car mileage allowance payments relating to rail operations over the Rail Line. At and after 12:01 a.m. on the day following the date of Closing, Buyer shall be responsible for: (d) all common carrier rail operations, including car supply, on the Rail Line; (e) any freight loss and damage claims

attributable to rail operations over the Rail Line; and (f) all car hire and car mileage allowance payments relating to rail operations over the Rail Line.

22. Electronic Data Interchange.

Within 30 days following the date of Closing, Buyer must have the ability to send and receive electronically waybills, advanced consists, and bills of lading; as well as Train II reports and passing/placement reportings for performance purposes. Transaction reporting should be at industry standard levels or one level behind.

23. Assignment of Freight Transportation Contracts.

The parties agree that, notwithstanding any other provision of this Agreement, the only freight transportation contracts to be assigned by this agreement are: (a) freight transportation contracts that apply to traffic moving to or from facilities on or along the Rail Line; or (b) freight transportation contracts with or involving shippers or receivers that have facilities on or along the Rail Line, and which would apply to one or more shipments to or from a facility on or along the Rail Line. Seller agrees to send on the date of Closing to each shipper (or consignee), and each railroad, who is a party to any freight transportation contract involving any existing or potential freight traffic movement to or from any rail origin or destination on the Rail Line, a Notice of Assignment, advising those parties of the following: (a) the occurrence of this sale; (b) the fact that all rates and service (and in the case of other railroads, revenue divisions) terms in each contract will remain the same; and (c) the fact that Buyer will replace Seller as the party responsible for all rail service to be performed under the contracts for all movements over all or any part of the Rail Line. Buyer agrees that as between Buyer and Seller, Seller's actions in

accordance with the terms of this Paragraph will discharge in full Seller's responsibility to assign freight transportation contracts to Buyer.

24. Applicable Law.

This agreement shall be governed by and construed in accordance with the laws of the State of Texas.

25. Effect of Waiver.

Any waiver by either Buyer or Seller, or failure of either Buyer or Seller to insist upon full and complete performance by Seller or Buyer of its obligations set forth in this Agreement, shall not constitute a waiver or release of such party's right to insist upon full and complete performance of any other obligations in this Agreement, or a waiver or release of such party's right to insist upon full and complete performance of the obligations that were waived or not enforced for periods prior to, or following, the waiver or failure to insist upon full and complete performance. This Agreement shall be amended or modified only by written agreement signed by the parties hereto.

26. Notices.

All notices and other communications under this Agreement shall be in writing and deemed properly served if delivered by hand to the party addressed or, if mailed, when received by the United States Postal Service in registered or certified mail, postage prepaid, or, if sent by a national overnight service, when received by the carrier service in a prepaid mailer, return receipt requested, addressed as follows:

Seller: Mr. Jerome M. Johnson
Assistant Vice President
Shortline/Interline Development
The Burlington Northern and Santa Fe Railway Company

2650 Lou Menk Drive
Fort Worth, Texas 76161

Buyer: Mr. Larry D. Wisener
President/Manager
South Plains Switching, Ltd. Company
P.O. Box 676
Slaton, Texas 79364

Either party hereto may change its address or addressee to which notices are to be given by providing written notice of the change to the other party.

27. Confidentiality.

Except to the extent that the terms of this Agreement are required to be disclosed by the STB, by order of any court of competent jurisdiction or any governmental agency, or by parties involved in financing this purchase, each party to this Agreement shall not disclose the contents of this Agreement to any other party, without the prior written consent of the other party to this Agreement. Any party who learns of any of the terms of this Agreement shall be required by the party to this Agreement who is disclosing the information not to disclose those terms to any other party without the prior written consent of both parties to this Agreement.

28. Entire Agreement; Integration of Agreement.

This document, together with all Exhibits attached hereto, constitutes the entire agreement between Buyer and Seller relating to this transaction. Any other prior or contemporaneous agreements, understandings, representations or statements, whether oral or written, relating to this transaction are merged herein. The headings and titles to provisions in this Agreement are for convenience only, and shall not be deemed to modify or affect the rights or duties of Buyer or Seller. All rights and obligations of Buyer and Seller set forth in this Agreement, or in any Exhibit attached hereto, are integral parts of this Agreement. The consideration inducing Buyer and Seller to enter into this Agreement includes all of the commitments by Buyer to Seller, and

by Seller to Buyer, as set forth in this Agreement, including terms set forth in the Exhibits attached hereto.

IN WITNESS WHEREOF, authorized representatives of the parties have executed this agreement as of the third day of May, 1999.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

SOUTH PLAINS SWITCHING, LTD., CO.

By: Douglas J. Babb
Title: Senior Vice President
Merchandise Business Unit

By: Larry W. Wierner
Title: President/Manager

EXHIBIT A

LIST OF TRACKS AND MAP/PRINT OF RAIL LINE

LUBBOCK TRACKS	ATSF Side(Track #)	Track Feet	BN Side(Track #)	Track Feet
(Includes both BNSF- Owned and Shipper Tracks)				
	0310	1804	9201	1608
	0311	258	9202	1531
	0312	120	9203	1460
	0313	49	9204	623
	0320	1686	9208	1100
	0320	366	9220	1026
	0331	995	9298	5067
	0332	578	9310	800
	0340	3146	9320	1026
	0341	432	9322	1685
	0370	4535	9330	1000
	0372	777	Orchard Lead	17298
	0373	110	9304	Unknown
	0380	12279	9311	Unknown
	0381	553	9312	Unknown
	0382	5515	9321	Unknown
	0385	109	9323-9326	Unknown
	0387	180	9331	Unknown
	0388	172	9333	Unknown
	Total	33660	9401-9406	Unknown
			9408-9412	Unknown
			9415	Unknown
			9420-9424	Unknown
			Total	34224

↑ TO MAIN
ATSF YARD

← N

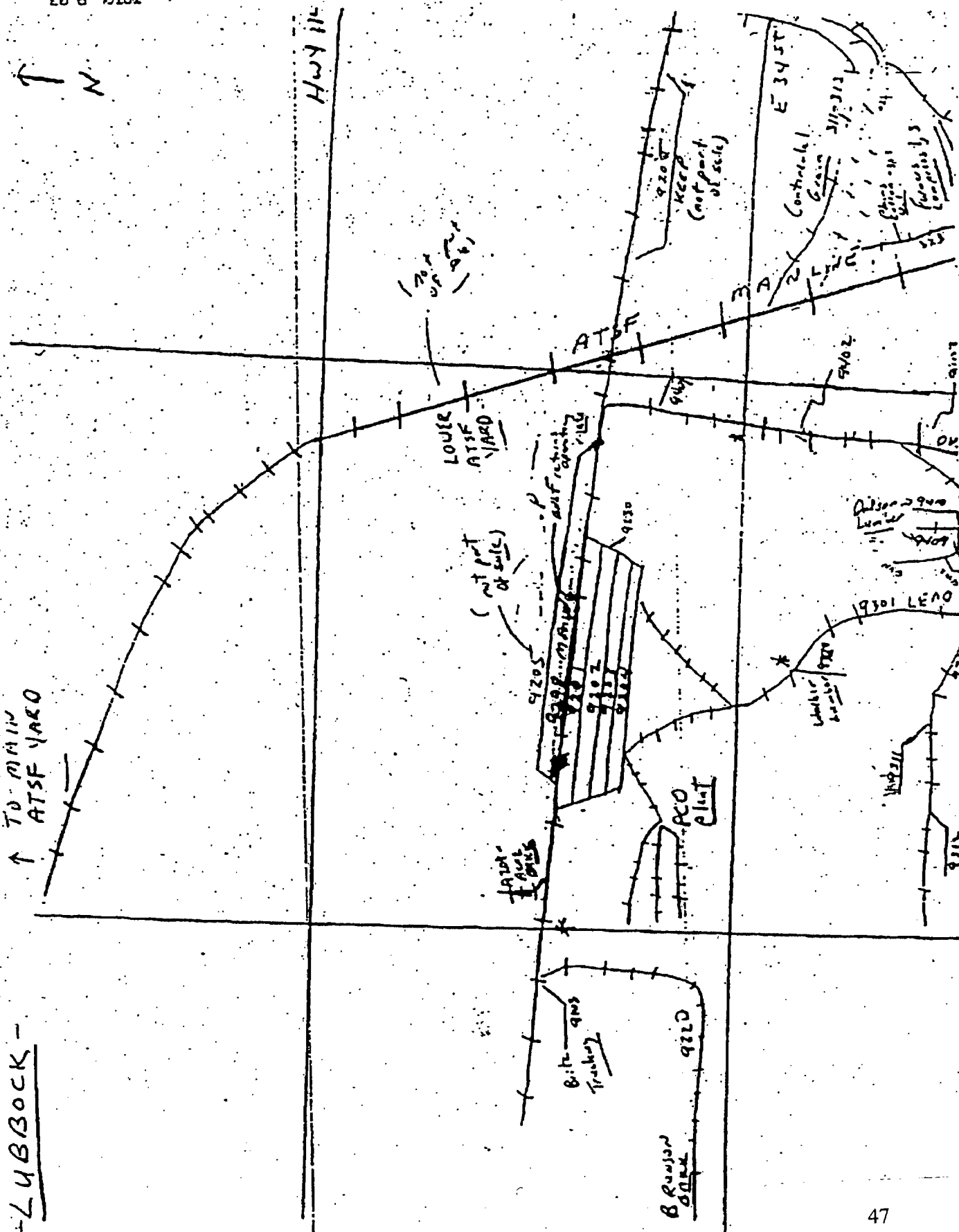


EXHIBIT B

QUITCLAIM DEED

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY, a Delaware corporation, Grantor, for Ten and no/100 Dollars (\$10.00) and other good and valuable consideration, to it duly paid, the receipt whereof is hereby acknowledged, does by these presents REMISE, RELEASE and QUITCLAIM, without any covenants of warranty whatsoever and without recourse to the Grantor, its successors and assignees, unto SOUTH PLAINS SWITCHING, LTD. COMPANY, Grantee, its successors and assignees, forever, all of its all the right, title and interest, if any, in and to a certain strip or parcel of land located in the County of Lubbock, Texas, as described in detail in Attachment 1, attached hereto.

SUBJECT, however, to all existing interests, including but not limited to all reservations, rights-of-way, easements and other encumbrances, of record or otherwise.

EXCEPTING AND RESERVING unto Grantor, its successors and assigns, all of the coal, oil, gas, casing-head gas and all ores and minerals of every kind and nature, including sand and gravel underlying the surface of the premises herein conveyed, together with the full right, privilege and license at any and all times to explore, or drill for and to protect, conserve, mine, take, remove and market any and all such products in any manner which will not damage

structures on the surface of the premises herein conveyed, or unreasonably interfere with the use of such premises, together with the right of access at all times to exercise these rights.

ALSO RESERVING unto Grantor, its successors and assigns, any and all water rights, and the exclusive right to develop and take water by any means, and to all appropriations, priorities, permits and certificates which are appurtenant to, associated with, used upon, flowing over, under, or lying on, in or under the premises herein conveyed, and an exclusive, permanent easement to construct, install, operate, replace, rework, reconstruct, rehabilitate and maintain any and all water diversion, production and transportation structures, equipment, improvements and piping, and to construct, install, operate and maintain water pumps and hydroelectric generation equipment necessary, convenient or related to the production, transportation or delivery of water from, on, under or across the premises herein conveyed, together with the right of access at all times to exercise these rights.

ALSO RESERVING unto Grantor, its successors and assigns, an exclusive, permanent easement for construction, reconstruction, maintenance, use and/or operation of one or more pipelines or fiber optic communication lines, facilities and appurtenances in, under, across, along and through all or any portion of the premises herein conveyed, including the right for Grantor, its successors and assigns, or any of its licensees, to enter, disturb the surface, and occupy the premises herein to be conveyed for purposes of constructing, reconstructing, maintaining, using and/or operating one or more pipelines or fiber optics communication lines, facilities and appurtenances in, under, across, along and through all or any portion of the premises herein to be conveyed; provided however, that all activities in the exercise of these rights shall be performed in a manner which will not damage structures on the surface of the premises herein

conveyed, and that Grantor shall notify Grantee in advance of any such entry, and shall enter and occupy such premises in a manner which does not unreasonably interfere with Grantee's use of such premises.

TO HAVE AND TO HOLD the same unto Grantee, its successors and assignees, forever.

IN WITNESS WHEREOF, Grantor has caused this instrument to be signed by its authorized representative, attested by its Assistant Secretary, and its corporate seal to be affixed hereto, on the _____ day of _____, 1999.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____
Title: _____

ATTEST:

By: _____
Assistant Secretary

STATE OF TEXAS)
) ss.
COUNTY OF TARRANT)

On this ____ day of _____, 1999, before me, the undersigned, a Notary Public in and for the State of Texas, duly commissioned and sworn, personally appeared Douglas J. Babb, Senior Vice President Merchandise Business Unit and an Assistant Secretary, respectively, of The Burlington Northern and Santa Fe Railway Company, the corporation that executed the foregoing instrument, and acknowledged the execution thereof to be the free and voluntary act and deed of such officer and the voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the foregoing instrument and that the seal affixed in the corporate seal of said corporation.

Witness my hand and official seal affixed the day and year first above written.

Notary Public

My commission expires: _____

Attachment 1

[property description]
to be supplied

MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF ANY OF THE PROPERTY; OR THE CONFORMITY OF ANY OF THE PROPERTY TO ITS INTENDED USES. SELLER SHALL NOT BE LIABLE TO BUYER FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING STRICT LIABILITY IN TORT) WHICH IS RELATED IN ANY WAY TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE, OF ANY OF THE PROPERTY CONVEYED BY DELIVERY OF THIS BILL OF SALE; OR THE CONFORMITY OF SUCH PROPERTY TO ITS INTENDED USES. SELLER CONVEYS TO BUYER, AND BUYER, BY ACCEPTANCE OF SELLER'S DELIVERY OF THIS BILL OF SALE, HEREBY ACCEPTS, ALL PROPERTY CONVEYED BY DELIVERY OF THIS BILL OF SALE IN "AS IS, WHERE IS" CONDITION, AND SUBJECT TO ALL LIMITATIONS ON SELLER'S RIGHTS, INTEREST, AND TITLE TO SUCH PROPERTY.

IN WITNESS WHEREOF, Seller has caused this Bill of Sale to be executed by its duly authorized representative on this _____ day of _____, 1999.

THE BURLINGTON NORTHERN AND
SANTA FE RAILWAY COMPANY

By: _____
Title: _____

EXHIBIT C

BILL OF SALE

THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY ("Seller"), for and in consideration of promises made by SOUTH PLAINS SWITCHING, LTD., COMPANY ("Buyer"), to purchase all of Seller's interest in the rail line segments identified in the Agreement for Sale of Certain Assets, Rights and Obligations of The Burlington Northern and Santa Fe Railway Company To South Plains Switching, Ltd. Company, dated as of May 3, 1999 (which property is hereinafter referenced as "Rail Line"), hereby sells, grants and conveys to Buyer, and Buyer's successors and assignees, all of Seller's rights, interest and title, to the following property constituting the Rail Line, subject to all limitations on Seller's rights, interest and title to the following property:

All rail, ties, spikes, tie plates, rail anchors, turnouts, bridges, culverts, signalling equipment, and other supporting structures, ballast, other track materials and supplies, and the metal depot at or near the Old BN Yard (excluding: (1) any and all vehicles, maintenance equipment on wheels, radios, and computer equipment; and (2) if a notice of interim trail use is filed and accepted as to the Rail Line or if trail use is implemented during the abandonment or discontinuance process, also excluding all bridges, culverts and bridge support structures) that on the date of this Bill of Sale are present on the real property comprising the Rail Line, whether on that date they are installed or uninstalled.

SELLER HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF ANY OF THE PROPERTY CONVEYED BY DELIVERY OF THIS BILL OF SALE, ITS

EXHIBIT D

**AGREEMENTS TO BE ASSIGNED IN PART
TO BUYER**

[To be furnished]